

PUBLIC SERVICE COMMISSION:  
MOTOR VEHICLES:

Lessee operating motor vehicle properly registered in the State of Texas and transporting own goods and wares in the State of Missouri, in operating for hire does not come within the purview of Public Service Act but must register said motor vehicle in the State of Missouri.

January 19, 1942

Honorable G. R. Chamberlin  
Prosecuting Attorney  
Cass County  
Harrisonville, Missouri



Dear Sir:

This will acknowledge receipt of your request of November 19, 1941, and supplemental request of December 26, 1941, which read as follows:

"I am following up a recent letter that I wrote you in the case of complaint by the Weight Officer, Jack Howard, who works in conjunction with the PSC officers, against one Jordan the driver for the Wicker Fish Company. He is charged by the Weight Officer for operating a truck for hire without obtaining a Permit from the Public Service Commission.

"Mr. Howard insists that their department hold that if a person has a lease for as much as ten days that they are classed by the PSC as owners of the truck and would thereby be required to secure registration in the State of Missouri.

"These people have gone to considerable length and hired attorneys, both local and otherwise, and set up a contract which was made the 12th day of October, 1940 to run until the 12th day of October, 1944, in which they set out in

detail their agreement with the Columbia-Lessors, Inc., a corporation of Dallas County, Texas, and the truck company agrees to keep the trucks in running order, in other words to service them, and that appears to be the extent of their having to do with the operation.

"They claim that they have secured a registration under the Texas law and are equipped with the Texas number plates and all of the things required by the Texas law, and that they as owners of the product are hauling their own stuff.

"I would like to have your opinion on whether or not there is anything that we can charge these people with, and if so would like to have your suggestion by preparing a charge.

"The charge seems to be a possibility of a two-fold charge. One is that under the contract the fish company considered as owners, appear to have some headquarters and offices in Missouri but they claim that their main office is in Dallas, Texas and so state in their contract with the Lessor Company. Can we charge them on account of not having a registration in Missouri? Second, under their lease agreement could it be held that the Columbia-Lessor Incorporated are in fact transporting for hire and merely evading the law by means of the contract?"

Your supplemental request of December 26, 1941, reads:

"Replying to your letter of December 23, in regard to the above case, I will give you an outline of the facts as nearly as I am able to figure them out.

"Jack Howard, employed by the State as Weight Officer, whose duties also cover

any infraction of the transportation or truck laws arrested one R. H. Jordan driver of an International tractor and trailer. Motor number 4033 and trailer serial 44878.

"Jordan stated he was employed as driver for the Wicker Fish and Poultry Company. My information is that Wicker Fish and Poultry maintain extensive offices and warehouses in Kansas City, Missouri, but their main office is in Dallas, Texas.

"The registration or license are issued by the Texas authorities.

"The driver did not have a copy of the lease contract between the Columbia Lessors Inc., stated in the contract as a Texas Corporation, and the Wicker Fish and Poultry Company also a Dallas County, Texas Corporation as lessee.

"The Officer charged him with operating a truck for hire and especially charged that where there is a lease agreement an agreement must be carried and produced by the driver. The driver did not have any contract with him. After the charge had been filed the attorney for the Wicker Fish Company sent me a copy of the contract, which I am enclosing herewith for your inspection.

"The Weight Officer contends that the driver of the truck and trailer is in fact the employee of the Columbia Lessors Inc., and as such that company should have Missouri tags or registration, and also that in case the Fish Company is hauling their own property the truck should bear a Missouri registration.

"These seem to be the applications as I gather it from the Weight Officer.

"The Fish Company insists that under the

laws of Texas they are required to take out the registration even under the provision of the contract from Texas."

You inquire if any charge may be pressed against either of the above companies by reason of this agreement entered into on the grounds that it was entered into so as to circumvent the Public Service Commission Act.

You further inquire if this Lessee may operate such trucks on the highways of this State without registering in Missouri.

After careful examination of the copy of the attached lease, the writer finds that the Columbia Lessors, Inc., a Texas corporation, has leased for a period of four years certain trucks to the Wicker Fish and Poultry Company, another Texas corporation. Said trucks are to be used to transport goods and wares belonging to the Wicker Fish and Poultry Company, Lessee, from Lessee's place of business to retailers in various states.

The Lessor obligated itself to maintain and keep in good repair all leased equipment, to insure trucks and take out liability to cover any damages or injuries to persons or property, to garage said trucks while in Dallas, Texas, to furnish all gasoline and lubricating oils used by said trucks and equipment. The Lessee obligates itself to use said equipment within a radius of thousand miles (1000) of Dallas, Texas. Lessee further agrees to pay Lessor a stipulated weekly rate for each truck and mileage, to employ and pay all drivers, reserving the right to the Lessor to object to such drivers who are careless and negligent in operating said equipment; Lessee further agrees to furnish all labor for loading and unloading said equipment, to insure all cargoes of goods against damage, etc. Lessee has already registered said trucks and equipment in the State of Texas.

The Public Service Commission Act in this State was primarily enacted to regulate common carriers transporting persons and property for hire. As stated in *Schwartzman Service v. Stahl*, 60 Federal (2d) 1034, l. c. 1037:

"Moreover, while 'a citizen may have, under the Fourteenth Amendment, the right to travel and transport his

property upon them by auto vehicle,' yet 'he has no right to make the highways his place of business by using them as a common carrier for hire. Such use is a privilege which may be granted or withheld by the state in its discretion, without violating either the due process clause or the equal protection clause.' Packard v. Banton, 264 U. S. 140, loc. cit. 144, 44 S. Ct. 257, 68 L. Ed. 596."

The Public Service Commission, being created by statute, is vested with only such authority as given it by statute. The same rule as laid down by the court, regarding authority of county courts, in Ray County v. Bentley, 49 Mo., 236, l. c. 242, is applicable to the Public Service Commission. The court said:

"The County Court does not derive its powers from the county, and it can exercise only such powers as the Legislature may choose to invest it with. Whatever jurisdiction is conferred upon it is wholly statutory. It acts directly in obedience to State laws, independently of the county. Where it acts for and binds the county, it exercises its authority by virtue of power derived from the State government, and it obtains authority from no other source. (Reardon v. St. Louis County, 36 Mo. 555.)"

The writer is unable to find wherein said lease may be considered a subterfuge so as to circumvent the Public Service Commission Act. It appears to be a perfectly valid document entered into in good faith. Unless there be other facts not revealed, the writer fails to see where any criticism can be leveled against such lease or any charges preferred against either of the parties to said lease.

We know of no provision of the Public Service Act which brings this Lessee under its regulation. This Lessee is merely transporting its own goods and wares from its own establishment to other branches and certain retail customers in other states.

It does not transport for hire other commodities or persons, neither does it hold itself out for such purposes. It is not in the business of transporting for hire, such as a common carrier, its main business being to sell fish and poultry, all of which it owns.

Section 5720, R. S. Missouri 1939, subdivision (b) of the Public Service Commission Act, in defining "motor carrier" reads as follows:

"The term 'motor carrier', when used in this article, means any person, firm, partnership, association, joint-stock company, corporation, lessee, trustee, or receiver appointed by any court whatsoever, operating any motor vehicle with or without trailer or trailers attached, upon any public highway for the transportation of persons or property or both or of providing or furnishing such transportation service, for hire as a common carrier: Provided, however, this article shall not be so construed as to apply to motor vehicles used in the transportation of passengers or property for hire, operating over and along regular routes within any municipal corporation or a municipal corporation and the suburban territory adjacent thereto, forming a part of transportation system within such municipal corporation or such municipal corporation and adjacent suburban territory, where the major part of such system is within the limits of such municipal corporation."

Subdivision (c) of the same Section defines "contract hauler":

"The term 'contract hauler', when used in this article, means any person, firm or corporation engaged, as his or its principal business, in the transportation for compensation or hire of persons and



or property for a particular person, persons, or corporation to or from a particular place or places under special or individual agreement or agreements and not operating as a common carrier and not operating exclusively within the corporate limits of an incorporated city or town, or exclusively within the corporate limits of such city or town and its suburban territory as herein defined."

The foregoing definitions are not broad enough to include the Lessee. In the Motor Vehicle Act the word "owner" is defined so as to include any person, firm, corporation or association owning or renting a motor vehicle or having exclusive use thereof under a lease for a period greater than ten days successively. Section 8367, R. S. Missouri 1939, in part reads:

"The term owner shall include any person, firm, corporation or association, owning or renting a motor vehicle, or having the exclusive use thereof under lease, or otherwise, for a period greater than ten days successively. \* \* \* \* \*

In view of the above definition of "owner", unless this State has full reciprocity with the State of Texas for the operation of such motor vehicles in Texas and Missouri, it will be necessary that said motor vehicles be registered in this State. Section 8375, R. S. Missouri 1939, exempts nonresident owners from registering in this State while operating motor vehicles on our highways, when like exemptions are granted residents of Missouri operating motor vehicles in their state, and reads:

"A nonresident owner, except as otherwise herein provided, owning any motor vehicle which has been duly registered for the current year in the state, country or other place of which the owner is a resident and which at all times when operated in the state has displayed upon it the number plate or

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or plates issued for such vehicle in the place of residence of such owner may operate or permit the operation of such vehicle within this state without registering such vehicle or paying any fee to this state, provided that the provisions of this section shall be operative as to a vehicle owned by a nonresident of this state only to the extent that under the laws of the state, country or other place of residence of such nonresident owner like exemptions are granted to vehicles registered under the laws of and owned by residents of this state."

We shall look to the Texas law to determine if like exemptions are granted Missouri residents while operating motor vehicles under similar circumstances in the State of Texas. Article 827b of the Penal Code of Texas requires the registration of said motor vehicles belonging to a resident of another state with the county tax collector, for which a fee shall be charged.

Therefore, it is the opinion of this Department, in view of this requirement which places an additional burden on residents of Missouri while operating a motor vehicle in Texas, that such trucks shall be registered within this state for the reason there is not full reciprocity between the States of Texas and Missouri.

Respectfully submitted

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

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